

The clause directing the commissioners to take evidence should be added to the form of the commission.

The act of Assembly requiring thirty days notice of the execution of the commission to be given, is not complied with by stating in the return, that *reasonable notice* was given ; but the commissioners must say in their return, either that they gave at least thirty days notice, or due notice, according to law.

[A partition having been decreed between the parties to this cause, (other than Mary Ann Dorsey,) a commission was issued for that purpose, and return made thereon, to which latter various objections have been raised, and their merits argued before the Chancellor.

The most prominent objections taken, were :

The assignment of the shares to the several parties interested, by the commissioners themselves, *without ballot*.

The omission on the part of the commissioners to ascertain and return the value of the whole estate to be divided, and that of the several parts as laid off by them, or its value, subject to the incumbrance of the widow's dower.

And the want of due notice to the complainant of the execution of the commission.

In considering the first of these, the Chancellor says :]

THE CHANCELLOR :

This objection, it seems to me, cannot be sustained, whether we regard the practice of the court, the act of assembly, or the rule of the English Court of Chancery in similar cases.

To whatever source we are to trace the jurisdiction of the Chancery Court of England in cases of partition, and that there is some obscurity in regard to it is very manifest, it never seems to have been the duty of the agents employed by the court for the purpose, to distribute the estate to be divided, by lot. On the contrary, the general practice has been for the commissioners themselves to assign to each of the parties his share of the estate. *Allnutt on Partition*, 88, 89.

This not only appears from the observations of the authors, but from the form of the commission, and the return of the commissioners to the Chancellor, as is shown by the precedents at pages 210, 211, 212, of the same book.